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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,678	02/15/2002	John Stanley Taras	TAR-001	1674

7590

09/10/2003

David P. Gordon, Esq.
65 Woods End Road
Stamford, CT 06905

EXAMINER

BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,678

Applicant(s)

TARAS ET AL.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-12 and 14-32 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 24-27 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Correction is noted and the rejection is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 6, 10-12, 14-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over PG-PUB 2003/0074002 to West, Jr. in view of U.S. Patent No. 6,019,762 to Cole.

West discloses a fracture pin comprising a first portion having a first diameter and first threads of a first diameter (FIG. 2), said first portion having a tip (FIG. 2) at one end and a second end, a second portion coupled to said second end of said first portion (FIG 2), said second portion having a second diameter larger than said first diameter, and second threads of a second thread diameter larger than said first thread diameter having a common pitch and thread depth (Paragraph 0016, 0023 and 0040), said second threads extending in a same direction as said first threads (FIG. 2); and a non-threaded shaft portion coupled to said second portion (Paragraph 0041), said shaft portion having a cross-sectional dimension

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which does not exceed a dimension of said second diameter. West discloses the claimed invention except for the second portion being provided with a plurality of longitudinal grooves spaced about an outer circumference of said second portion. Cole teaches that grooves are provided on an outer circumference to provide means for a driving tool to drive the fastener into the surrounding bone (Column 4 lines 20-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the bore (24) of West with the longitudinal grooves of Cole in order to use a corresponding drive tool.

Regarding claims 2 and 28, West discloses that the first and second threads are continuous (Paragraph 0023).

Regarding claim 6, West discloses that said shaft portion is substantially cylindrical (FIG. 2).

Regarding claim 10, West discloses that said pin is not provided with a head portion (FIG. 2).

Regarding claim 11, West discloses that all threads on said first portion have said first thread diameter (FIG. 2).

Regarding claim 12, West discloses that said pin is made of metal (Paragraph 0045).

Regarding claims, 14, 19 and 25, West, as modified does not disclose 3 grooves spaced apart 120°. Cole teaches providing both 2 and 4 grooves (FIGS. 2 and 4). It would have been an obvious choice to provide three grooves instead of two or four grooves as an obvious matter of design choice.

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Regarding claims 22 and 32, West further discloses a mill tool adapted to remove bone and define an opening in the bone (Paragraph 0064). The channel in which the device is placed must be formed by a drill or mill that will remove the cut bone.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over PG-PUB 2003/0074002 to West, Jr. in view of Cole '762.

West, as modified, discloses the claimed invention except for the size of the thread diameters and the lengths of the first and second portions of the pin. It would have been an obvious matter of design choice to provide the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

5. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over PG-PUB 2003/0074002 to West, Jr. in view of Cole '762 as applied to claim 1 above, and further in view of U.S. Patent No. 6,454,772 to Jackson.

West, as modified, discloses the claimed invention except for the frangible portion between the second portion and the shaft. West discloses that the device may be severed and part of the device removed (Paragraph 0047). Jackson teaches that a break away portion may be provided so that a portion of a device may break away after a preselected torque is applied (Column 3 lines 1-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of West with a frangible portion in order to break off the excess length of the device after a preselected torque is applied.

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Allowable Subject Matter

6. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1-12 and 14-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization

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where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Jessica R Baxter
Examiner
Art Unit 3731

jr
rb

September 8, 2003


MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700